

Lake Superior Court, Room 6
2293 North Main Street
Crown Point, IN 46307

STATE OF INDIANA)

COUNTY OF LAKE)

STATE OF INDIANA,)

Plaintiff,)

v.)

DAVID GESMOND,
individually and doing business as
CORNERSTONE BUILDERS &
DEVELOPMENT LLC and
CORNERSTONE BUILDERS &
DEVELOPMENT, INC.,)

CORNERSTONE BUILDERS &
DEVELOPMENT LLC, and)

CORNERSTONE BUILDERS &
DEVELOPMENT, INC.,)

Defendants.)

SS: FILED IN

CLERK'S OFFICE

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CAUSE NO.

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ANNA N. ANTON
CLERK LAKE SUPERIOR COURT

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CLERK LAKE SUPERIOR COURT

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06-20-02

**COMPLAINT FOR INJUNCTION, RESTITUTION,
COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1 *et seq.*, for injunctive relief, costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code 24-5-11-14.

2. Defendant, David Gesmond ("Gesmond"), is an individual who at all relevant times engaged in business as a home improvement contractor as Cornerstone Builders & Development LLC and Cornerstone Builders & Development, Inc., with a principal place of business at 9412 Larch Drive, Munster, Indiana.

3. Defendant, Cornerstone Builders & Development LLC, is an Indiana Limited Liability Company, with a principal place of business at 9412 Larch Drive, Munster, Indiana. Upon information and belief, Defendant Gesmond is a manager of Defendant Cornerstone Builders & Development, LLC.

4. Defendant, Cornerstone Builders & Development, Inc., is an Indiana Corporation, with a principal place of business at 9412 Larch Drive, Munster, Indiana. Upon information and belief, Defendant Gesmond is an officer of Defendant Cornerstone Builders & Development, Inc.

FACTS

5. As alter ego of Cornerstone Builders & Development, LLC, Gesmond has been conducting, managing, and controlling the affairs of the company as if it were his own business, and he has used Defendant company for the purpose of defrauding consumers as hereinafter set forth.

6. As alter ego of Cornerstone Builders & Development, Inc., Gesmond has been conducting, managing, and controlling the affairs of the corporation as if it were his own business, and he has used Defendant corporation for the purpose of defrauding consumers as hereinafter set forth.

7. Since at least May 22, 2000, Defendants, individually or collectively, have entered into home improvement contracts with Indiana consumers.

A. Allegations Regarding Rita Bais.

8. On May 22, 2000, Defendants entered into a contract with Rita Bais, of St. John, Indiana, wherein Defendants agreed to perform repair and liner replacement work on an in-ground pool located on the Bais' property for a price of Two Thousand Seven Hundred Sixty-Two and 95/100 Dollars (\$2,762.95), of which Bais paid One Thousand Seven Hundred Dollars (\$1,700.00) as a down payment. A true and correct copy of Defendant's contract with Bais is attached and incorporated by reference as Exhibit "A."

9. Defendants failed to include the following information in the contract with Bais:

- a. [A]ny time limitation on the consumer's acceptance of the home improvement contract;
- b. A reasonably detailed description of the proposed home improvements;
- c. Each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- d. A reasonably detailed description of the proposed home improvements, or a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract was subject to the consumer's separate written and dated approval of the specifications;
- e. The approximate starting and completion dates of the home improvements;

- f. A statement of any contingencies that would materially alter or change the approximate completion date; and
- g. Signature lines for the home improvement supplier (or agent) and for each consumer with a legible printed or typed version of that person's name placed directly after or below the signature.

10. Defendants did not provide home improvement contracts in a form that Bais could reasonably read and understand.

11. Defendants did not provide completed home improvement contracts to Bais before it was signed by Bais.

12. Defendants did not give fully executed copies of the home improvement contracts, including the dates it was signed by the Defendants and Bais, immediately after Bais signed it.

13. At the time the home improvement contract was entered into, Defendants represented by implication that all work would be completed within a reasonable period of time.

14. Defendants have failed to complete the contracted work on Bais' pool.

B. Allegations Regarding Tim Hipp.

15. On or around June 21, 2000, Defendants entered into a contract with Tim Hipp of Crown Point, Indiana, wherein Defendants agreed to perform repair work and replace the liner of the inground pool at Hipp's home for a price of Three Thousand One Hundred Ninety-Two and 29/100 Dollars (\$3,192.29), of which Hipp paid Two Thousand and Ninety Dollars (\$2,090.00) as a down payment. A true and correct copy of Defendants' contract with Hipp is attached and incorporated by reference as Exhibit "B."

16. Defendants failed to include the following information in the contract with Hipp:

- a. [E]ach of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- b. The date the home improvement contract was submitted to the consumer;
- c. A reasonably detailed description of the proposed home improvements, or a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract was subject to the consumer's separate written and dated approval of the specifications;
- d. [A]ny time limitation on the consumer's acceptance of the home improvement contract;
- e. The approximate starting and completion dates for the home improvement; and
- f. A statement of any contingencies that would materially change the approximate completion date.

17. Defendants did not provide a home improvement contract in a form that Hipp could reasonably read and understand.

18. Defendants did not provide a completed home improvement contract to Hipp before it was signed by Hipp.

19. Defendants did not give a fully executed copy of the home improvement contract, including the dates it was signed by the Defendants and Hipp, immediately after Hipp signed it.

20. At the time the home improvement contract was entered into, Defendants represented by implication that all work would be completed within a reasonable period of time.

21. Defendants have failed to complete the contracted work on Hipp's pool.

COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

22. The services described in paragraphs 8 and 15 are "home improvements" as defined by Ind. Code § 24-5-11-3.

23. The transactions referred to in paragraphs 8 and 15 above are "home improvement contract[s]" as defined by Ind. Code § 24-5-11-4.

24. Defendants are "suppliers" as defined by Ind. Code § 24-5-0.5-2(a)(3).

25. By failing to provide Bais and Hipp with completed home improvement contracts containing the information referred to in paragraphs 9, 10, 11, 12, 16, 17, 18, and 19, Defendants violated the Home Improvement Contracts Act, Ind. Code §24-5-11-1, *et seq.*

26. Defendants' violations of the Indiana Home Improvement Contracts Act referred to in paragraph 25 constitute deceptive acts and subject Defendants to the remedies and penalties under Ind. Code §24-5-0.5-1, *et seq.*

COUNT II – VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

27. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 26 above.

28. The transaction referred to in paragraphs 8 and 15 are “consumer transaction[s]” as defined by Ind. Code §24-5-0.5-2(a)(1).

29. Defendants are “suppliers” as defined by Ind. Code §24-5-0.5-2(a)(3).

30. By representing that all work would be done within a reasonable period of time, as referred to in paragraphs 13 and 20 above, when Defendants knew or reasonably should have known they could not perform within the stated time frame, Defendants violated the Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-3(a)(10).

31. The deceptive acts complained of herein will continue unless Defendants are enjoined from committing such acts in the future.

**COUNT III – KNOWING AND INTENTIONAL VIOLATIONS OF THE
DECEPTIVE CONSUMER SALES ACT**

32. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 31 above.

33. The misrepresentations and deceptive acts set forth in paragraphs 9, 10, 11, 12, 13, 16, 17, 18, 19, and 20 were committed by Defendants with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against Defendants, David Gesmond, individually and doing business as Cornerstone Builders & Development, LLC, and Cornerstone Builders & Development, Inc., Cornerstone Builders & Development LLC, and Cornerstone Builders & Development, Inc., enjoining Defendants from the following:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract which includes at a minimum the following:

- (1) The name of the consumer and the address of the residential property that is the subject of the home improvement;
- (2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- (3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- (4) A reasonably detailed description of the proposed home improvements;
- (5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- (6) The approximate starting and completion date of the home improvements;
- (7) A statement of any contingencies that would materially change the approximate completion date;

(8) The home improvement contract price; and

(9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;

b. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment;

c. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer; and

d. representing expressly or by implication that the Defendants are able to deliver or complete the subject of a consumer transaction within a reasonable period time, when the Defendants know or reasonably should know that they cannot.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against Defendants for the following relief:

a. cancellation of Defendants' contract with Tim Hipp pursuant to Ind. Code §24-5-0.5-4(d);

b. consumer restitution in the amount of Two Thousand Ninety and 00/100 Dollars (\$2,090.00) to Tim Hipp;

c. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

d. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for Defendant Gesmond's knowing violations of the Deceptive Consumer Sales Act, in the amount of five hundred and 00/100 dollars (\$500.00) per violation, payable to the State of Indiana;

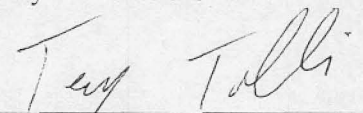
e. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for Defendant Gesmond's intentional violations of the Deceptive Consumer Sales Act, in the amount of five hundred and 00/100 dollars (\$500.00) per violation payable to the State of Indiana;

f. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
Indiana Attorney General
Atty. No. 4150-64

By:


Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49

Office of Attorney General
Indiana Government Center South
402 W. Washington, 5th Floor
Indianapolis, IN 46204
Telephone: (317) 233-3300

52023 - eaa

924-7720
new

Cornerstone Builders Clayton Lambert
Heritage Pools

Heritage Fireplace & Pool
3218 E. 84th Place Suite D • Merrillville, IN 46410
(219) 947-9999 Fax (219) 947-2554
718 4455 - 736 9971 RES 738 5985 offer

Contract Date 06/21/2000 Customer Name Mr + Mrs Davis
Address 11225 80th place Home Phone _____
St John Work Phone _____

Pool Repair

Remove + Replace OVAL liner
17'30" x 16'30" x 4' MD -
Replace face plate + GASKETS
Replace SKIMMER PLATE + Paint Coping
liner 1685.70 1685.70
84.25 84.25
1769.95 1769.95

ALL SALES FINAL - Deposits Not Refundable

Joan Shadow End

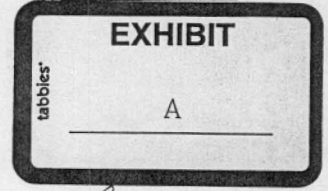
Sub Total \$ 2685.70
Sales Tax \$ 84.25
Total \$ 2769.95
Down Payment \$ 700.00
Misc. \$ 1069.95
Total Balance Due \$ 1069.95

APPROVED AND ACCEPTED BY:

Buyer X _____ Date _____

Buyer _____ Date _____

Salesperson [Signature] Date Desired WK of Jun. 15th



✓ #
1821
\$526.00
\$1700

For Questions or Comments Please Call
(219) 947-9999
Between 10:00 am and 5:00pm Monday thru Friday
MAKE CK'S PAYABLE TO CORNERSTONE BLDGS.

gray P URBLO

1207 HW 30 MAR 11R

Heritage Fireplace & Pool

3218 E. 84th Place Suite D • Merrillville, IN 46410

(219) 947-9999 Fax (219) 947-2554

2305 E 7th Ave Merrillville IN 46397-8571 / 7369971 Cell 7184455

9412 Larch Dr
Munster IN 46301
Sales Agreement

Contract Date _____ Customer Name Mr + Mrs Tim + Mary

Address 9915 Merrillville Rd Home Phone 662 8316

C Point Ind 46307 Work Phone _____

Pool Repair

Mfg of Pool Ciagen + Lampert -

REMOVE liner + debris -

REPLACE liner 20 ft Sides + Bottom Custom Made By Plasterade

install liner + gaskets + Ke-chens + Face plates

foam seal upels + Shallow End

patch side walls + Bottom w/ Torpedo Sand trough

Start up pool + Chemical w/ Solar Cover Included

EST TO REPLACE underground line of broken APPROX 1200 to 1500.00 NOT

INCLUDED in the EST

| | |
|-------------------|-------------------------------|
| Sub Total | \$ <u>3192.29</u> |
| Sales Tax | \$ _____ |
| Total | \$ <u>3192.29</u> |
| Down Payment | \$ <u>2070.00</u> - <u>OK</u> |
| Misc. | \$ _____ |
| Total Balance Due | \$ <u>1122.29</u> <u>OK</u> |

ALL SALES FINAL - Deposits Not Refundable

Approx Start Date week of July 10th

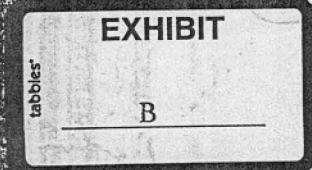
APPROVED AND ACCEPTED BY:

Buyer X [Signature] Date 10/8/08

Buyer _____ Date _____

Salesperson [Signature] Date Desired week of 10/10/08

PURBIO
Grey Tile
FABRIC CHAIR
WALL
FABRIC PULLON



For Questions or Comments Please Call (219) 947-9999 219-763-3950

Between 10:00 am and 5:00pm Monday thru Friday

MAKE OK AVAILABLE to CHANGING LINE